IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MMO No. 93 of 2007.

Date of Decision: 11th December, 2007

Sandeep Bhatnagar. **Petitioner.**

Versus

State of Himachal Pradesh. **Respondent.**

Coram

The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting?[1]

For the petitioner: Mr. Ajay Kumar, Advocate, with
Mr. Atul Nehra, Advocate.

For the respondent: Mr. P.M. Negi, Dy. Advocate General.

V.K. Gupta, C.J. (Oral).

A very unique and peculiar method, but totally unknown to law, was adopted by the learned trial Magistrate which led to the summoning by him of the petitioner as an accused in a case pending before his Court under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.

Respondent had filed the aforesaid complaint in the Court of the learned Additional Chief Judicial Magistrate, Kasauli alleging therein that 40X5 Kg. bags of Fortified Whole Wheat Atta was adulterated. According to the averments contained in the complaint, the complainant inspected the premises of M/s Parkash Agencies, Parwanoo on 23rd August, 2003 and purchased a specified quantity of the aforesaid wheat Atta and made samples thereof. M/s Parkash Agencies

[1] Whether the reporters of Local Papers may be allowed to see the judgment?

being a retail seller of the wheat Atta accordingly was impleaded as accused No.1 in the complaint through its Manager, namely, Shri Pawan Kumar. In para (2) of the complaint, there is a specific averment that accused No.1 disclosed to the complainant under Section 14A of the Act that it had purchased the Atta in question from Cargil India Pvt. Ltd. The averment to this effect, as forming part of para 2 of the complaint, reads thus:-

> "2.....At the time of taking sample accused No.1 disclosed under Section 14-A that he had purchased the Atta in question from Cargil India Pvt. Ltd. CFA New Vision Agencies, village Fabnot Chandigarh – Suirakpur Road, Distt. Ropar (Punjab) vide invoice was sent to accused No.2 under registered cover."

In para (6) of the complaint, the complainant went on to say that since Cargil India Pvt. Ltd. had not nominated any person under Section 17(2) of the Act so all its Directors are responsible for the conduct of the business of the Company etc. etc. For ready reference, para (6) of the complaint is reproduced hereinbelow, which reads thus:-

> "6. The Cargil India Pvt. Ltd. has not nominated any person under Section 17(2) of the PFA Act with the LHA, Solan so all its Directors are responsible for the conduct of the business of the company and has sold adulterated Atta to accused No.1 vide invoice No.15047 dated 21.7.2003 and company through its Managing Director along with all Directors are liable to be punished under section 16(1)(a)(i) read with section 7(1) of PFA Act."

It was based upon the aforesaid averments that the complaint was presented before the learned trial Magistrate impleading Pawan Kumar as accused No.1 and Cargil India Pvt. Ltd. as accused No.2. It shall be advantageous to take note of the description of the accused persons as it is occurring in the cause title of the complaint. The description is as under:-

> "1. Shri Pawan Kumar son of Shri Prem Chand Gupta, Manager for M/s Parkash Agencies HCF No.1 Sector-1, Parwanoo, Tehsil Kasauli, Distt. Solan, H.P.
> 2. Cargil India Pvt. Ltd. CPA-Newvision Agencies, village Pabhot, Chandigarh Sirakpur Road, Distt. Ropar (Punjab) through its Managing Director along with its all Directors."

What, therefore, is clearly noticeable is that no individual by name was impleaded in the complaint in the array of accused persons as far as Cargil India Pvt. Ltd. is concerned. It only mentioned "Managing Director along with all its Directors" as representing Cargil India Pvt. Ltd.

The original record of the trial Court reveals to me that it was on 2nd January, 2004 that the learned Magistrate took cognizance of the complaint and ordered the issuance of summons for the presence of the accused for facing trial before him. Interlocutory order dated 13th August, 2004 suggests that accused No.1 had put in appearance. Accused No.2, however, not having appeared, summons were ordered to be issued for its appearance. Thereafter various orders were passed by the learned trial Magistrate for the service of

accused No.2. On 14th September, 2006, the learned trial Magistrate directed that fresh notice be issued to accused No.2 on filing process fee, copy of complaint and correct address within a week. This order reads thus:-

> "Let fresh notice be issued to accused No.2 on filing PF, copy of complaint, and correct address within a week, process returnable for 14.11.2006."

On 7th August, 2007, the learned trial Magistrate after observing that accused No.2 was not present despite service, ordered the issuance of bailable warrants against it.

An interesting development took place on 14th September, 2006. A plain piece of paper, quite small in size, bearing the date of 14th September, 2006 appears to have been slipped into the file of the trial Magistrate by someone which I today found tagged with the file of the trial Court at page No.9. It is worthwhile to reproduce verbatim, in its entirety whatever is written on this small piece of paper. It reads thus:-

> "M/s Cargill India Pvt Ltd. 14.9.06
> C/O ORIX, 7B, Maruti Industrial Area,
> Sector-18, Gurgaon 122003 Haryana
> Tel No.0124-5018955/58.
> Concerned person:- Sandeep Bhatnagar
> Rajiv Jain.
>
> F.I. Pawan."

Apparently, the learned trial Magistrate lifted from this piece of paper the name of the petitioner, Sandeep Bhatnagar and without any application of mind, without any

consideration of any relevant fact and without invoking, applying or considering any applicable law on the subject, mechanically appears to have issued summons for the presence of the petitioner Sandeep Bhatnagar as an accused representing Cargil India Pvt. Ltd.

When confronted with the aforesaid factual peculiarity on 20th November, 2007, Mr. Negi, learned Deputy Advocate General had sought a short adjournment to obtain instructions. He reported to the Court today that the aforesaid small piece of paper appears to have been slipped into the file of the trial Court by none else than accused No.1.

Section 17 of 1954 Act relates to the offences by the Companies. Sub-Section (2) of this Section specifically lays down that any Company may, by order in writing, authorize any of its Directors etc. to exercise all such powers etc. for preventing the commission by the company of any offence under this Act and may give notice to the Local Health Authority to the aforesaid effect. It is by virtue of sub-Section (2) of Section 17 that in sub-Section (1) thereof, the persons so nominated are held responsible as accused representing the Company. Sub-Clause (ii) of Clause (a) of sub-Section (1) of Section 17 alternatively lays down that if no nomination under sub-Section (2) has been made by the Company every person who at the time the offence was committed was in charge and responsible to the Company for the conduct of the business of the Company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished

accordingly. For ready reference, sub-Section (1) of Section 17 of the Act is reproduced hereunder, which reads thus:-

> "17. Offences by companies.-(1) Where an offence under this Act has been committed by a company-
>
> (a)(i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or
>
> (ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and
>
> (b) the company,
>
> shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence".

Apparently being aware of the aforesaid legal position the respondent-complainant in para (6) of the complaint by mentioning that Cargil India Pvt. Ltd. not having made any nomination under sub-section (2) of Section 17 (supra) did aver that all its Directors are responsible for the conduct of the business of the Company and accordingly are liable to be punished under the relevant provisions of the 1954 Act. He, however, stopped at that because neither in

para (6) of the complaint nor anywhere else in the body of the complaint nor for that matter in its cause title, did he name any persons in terms of sub-section (1) of Section 16 of the Act, either in its capacity as a Director or otherwise as being responsible for the conduct of the business of the company and thus liable for punishment.

In the case of **M/s Merind Limited** vs. **State of H.P. and others**, reported in 2006 (4) RCR (Criminal) 802, this Court while dealing with an identical provision contained in the Drugs and Cosmetics Act, 1940 clearly held that unless a person named in the complaint has been specifically alleged to be responsible for the conduct and affairs of the Company at the relevant time and being in charge of the Company also at the relevant time, he cannot be proceeded against as an accused. What, therefore, clearly emerges is that either in the complaint or in the statement of the complainant there had to be a specific averment and allegation that the petitioner Sandeep Bhatnagar at the time of the commissioning of the offence was, in terms of Section 17(1) of the Act in charge of, as well as responsible to the Company for the conduct of the business of the Company. The complaint did not at all contain any such allegation or accusation qua the petitioner. No document was filed by the complainant in the Court in support of any allegation or accusation against the petitioner. Merely on the basis of a piece of paper, not authenticated by any one nor signed by any one nor being a part of any pleadings of any party, not presented in any appropriate or suitable manner in the Court, in a very very mechanical

manner, with a total non application of mind, the learned trial Magistrate issued process against the petitioner without either bothering to find out whether the petitioner at the relevant time was in charge of as well as responsible to the Company for the conduct of the business of the Company. Not only that, the learned trial Court did not even bother to find out as to what was the status of the petitioner, if at all, in Cargil India Pvt. Ltd. at the relevant time and whether the petitioner had any link or relationship with that Company. Very Very unfortunately the learned trial Magistrate by his aforesaid irresponsible act caused great prejudice to the petitioner in summoning the petitioner as an accused in the total absence of any material worth the name against him.

Mr. Negi, learned Deputy Advocate General appearing for the respondent has very fairly and frankly conceded before me that indeed the aforesaid action of the learned trial Magistrate was totally illegal, based as it was without any support or sanction from law as well as the established principles of Criminal Jurisprudence. He actually went on to suggest that I should quash in its entirety the action of the learned Magistrate in summoning the petitioner as an accused in the aforesaid case.

For whatever has been stated above, and based on the aforesaid reasoning this petition is allowed. The action of the learned trial Magistrate in summoning the petitioner is quashed in its entirety. The petitioner shall not be considered as being an accused in the aforesaid complaint.

This judgment, however, shall not come in the way of the respondent in moving an appropriate application strictly in accordance with the provisions of 1954 Act read with the relevant provisions of Code of Criminal Procedure for summoning any nominated person or persons as accused representing Cargil India Pvt. Ltd. including the petitioner herein, if respondent satisfies the learned trial Court, based upon all the relevant legal provisions that such person or persons indeed at the relevant time were in charge of as well as responsible to the Company for the conduct of the business of the Company.

The petition is allowed and disposed of.

Cr.MP No. 502 of 2007.

In view of the disposal of the main petition, this application is disposed of.

11th December, 2007. (V.K. Gupta), C.J.
(tr)